

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA, ) CASE NO.: CR01-325-TSZ  
Plaintiff, )  
v. )  
GEORGE LAVELL FROST, ) SUMMARY REPORT OF U.S.  
Defendant. ) MAGISTRATE JUDGE AS TO  
 ) ALLEGED VIOLATIONS  
 ) OF SUPERVISED RELEASE

An evidentiary hearing on supervised release revocation in this case was scheduled before me on July 7 and July 15, 2005. The United States was represented by AUSA Jeffrey B. Coopersmith and the defendant by Kenneth E. Kanev. The proceedings were recorded on cassette tape.

Defendant had been sentenced on or about December 14, 2001 by the Honorable Thomas S. Zilly on a charge of Wire Fraud and sentenced to 18 months in custody, 3 years supervised release.

The conditions of supervised release included requirements that defendant comply with all local, state, and federal laws and with the standard conditions of supervision. Other special conditions included no firearms, narcotic addiction/drug dependency treatment and mandatory testing, refrain from alcohol and other intoxicants, submit to search, provide access to financial information, maintain a single checking account and disclose information regarding the account

01 to probation officer, make records available to probation officer if engaged in a business, disclose  
02 all assets and liabilities and do not transfer assets without consulting with probation officer, do not  
03 incur new credit obligations without permission, no employment in mortgage lending and/or  
04 banking, no employment by friends, relatives, associates or persons previously known to defendant  
05 without permission of probation officer, do not accept employment without approval of probation  
06 officer, do not work for cash, provide employment pay stubs to probation officer, and restitution  
07 in the amount of \$220,570. (DKT 16, EX 1)<sup>1</sup>

08 Defendant filed a motion to amend the conditions of supervised release to be allowed to  
09 be employed in the mortgage lending/banking industry (DKT 18, EX 4), but the motion was  
10 denied (DKT 21, EX 6). The judgment was amended on September 22, 2003 to change the  
11 amount of restitution to \$216,620. (DKT 22, EX 2)

12 In an application dated February 3, 2005, Senior U.S. Probation Officer Michael K. Banks  
13 alleged the following violations of the conditions of supervised release:

14 1. Committing the crime of making false statements, in violation of 18 U.S.C. §1001,  
15 on or about February 2, 2004, March 1, 2004, April 1, 2004, and May 1 ,2004.

16 2. Committing the crime of wire fraud, in violation of 18 U.S.C. §1343, from in or  
17 about January 2004 until the present, in violation of the general condition that he not commit any  
18 federal, state or local crime.

19 3. Committing the crime of tampering with a witness, in violation of 18 U.S.C.  
20 §1512(b)(3), in or about November 2004, in violation of the general condition that he not commit  
21 any federal, state or local crime.

22 4. Failing to disclose interest in a business or enterprise, in violation of special  
23 condition #8.

24 5. Failing to maintain a single checking account in the defendant's name, in violation

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26 <sup>1</sup> References to the court docket will be cited as "DKT". References to the transcript of  
the evidentiary revocation hearing will be cited as "TR". References to the exhibits from the  
evidentiary revocation hearing will be cited as "EX".

01 of special condition #7.

02 6. Being self-employed without prior approval, in violation of special condition #12.

03 7. Changing residence without permission, in violation of standard condition #6.

04 (DKT 23)

05 Defendant was advised in full as to those charges and as to his constitutional rights, and  
 06 requested an evidentiary hearing before a Magistrate Judge (DKT 26). The hearing was held on  
 07 July 7 and July 15, 2005, at which time testimony was taken, exhibits were admitted into evidence,  
 08 and the argument of the parties was considered (DKT 38, 40). The parties were given the  
 09 opportunity to file additional closing memoranda by July 29, 2005. The matter is now ready for  
 10 decision.

11 **Case History**

12 George Lavell Frost<sup>2</sup> was charged by Information with committing the offense of wire  
 13 fraud in violation of 18 U.S.C. §1343. Defendant waived Indictment and pled guilty to this  
 14 offense on September 19, 2001. (DKT 7). In the plea agreement, defendant admitted that he  
 15 utilized a business known as Frost Enterprises and other businesses to defraud investors by falsely  
 16 telling such investors that their funds would be placed in income-producing enterprises such as real  
 17 estate loans and projects, an adult care facility, and a mortgage brokerage business, and securing  
 18 their investments with real property while having no security interest or other interest in such real  
 19 property. Defendant admitted that funds were used for purposes neither disclosed to investors nor  
 20 authorized by them, including for his own personal use and benefit, and failed to disclose material  
 21 facts to investors such as the uses to which the money would be put, the risks of the investments,  
 22 and other material facts. (DKT 6, EX 3). Defendant was sentenced on December 14, 2001 and  
 23 remanded to the custody of the United States Bureau of Prisons. He commenced supervision on  
 24 May 23, 2003 with the United States Probation Office. U.S. Probation Officer Leroy Washington  
 25 was assigned to supervise Mr. Frost, followed by Michael Banks upon Mr. Washington's

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<sup>2</sup> The defendant is usually referred to in the transcript and exhibits as "Lavell".

01 retirement. (TR 6)

02 **Summary of Allegations**

03 The United States contends that defendant violated his supervised release by falsely  
04 reporting on his monthly probation reports that he was employed by Apex Marketing, which the  
05 government asserts was a sham business constructed for the purpose of covering up Mr. Frost's  
06 true employment working for a family owned company called Prime Realty. In the course of his  
07 actual employment, not disclosed to his probation officer, he is alleged to have committed the  
08 crime of wire fraud by recruiting "straw buyers" to fill out mortgage loan applications with false  
09 information which he arranged to have fraudulently verified. As a result of this alleged scheme,  
10 money was disbursed to him by interstate wire from the proceeds of the mortgage loan. As part  
11 of the scheme, the houses were to be resold and the defendant would realize further profit from  
12 the re-sale. These actions form the basis for the allegation that defendant violated the condition  
13 of supervised release which required him to be employed lawfully. He is further alleged to have  
14 committed or attempted to commit the crime of witness tampering by "corruptly persuading" (*cf*  
15 18 U.S.C. §1512(b)(3)) one of the aforementioned straw buyers to give false information to the  
16 FBI regarding the real estate transactions. He is alleged to have an interest in and to be employed  
17 by the family business Prime Realty which he failed to disclose, to have failed to maintain a single  
18 bank account into which he deposited all income and from which he made payments for personal  
19 expenses, and to have been residing at a location which he did not disclose to his probation officer.

20 Defendant denied the allegations.

21 **Findings of Fact**

22 ***Monthly Reports***

23 Shortly before his release from custody to commence supervised release, the defendant met  
24 with Calvin Bethea at the United States Probation Office and reviewed the terms of supervised  
25 release, signing a document to indicate that he fully understood the conditions and had been  
26 provided a copy of them. (EX 7 (entry of April 22, 2003), EX 7A, TR 18-19)

Upon commencing supervision, the defendant submitted monthly reports to his probation officer. Initially, the defendant reported intermittent periods of employment with CNA Construction interspersed with periods of unemployment, submitting his paycheck stubs to his probation officer as required. (EX 7 (pages 3-4), EX 8-16) Each report signed by the defendant contained a warning that any false statement could result in revocation of supervised release, imprisonment, or a fine.

## *Employment with Prime Realty*

8 In the monthly report for February 2004, defendant reported employment as a "marketing  
9 rep" by Apex Marketing in Renton, Washington. He reported his immediate supervisor was  
10 Shawnette Sampson, and that his first paycheck would be \$1500. In response to other questions  
11 on the report form, he stated that he did not have a checking or savings account, and that the only  
12 other cash inflow he had received that month was \$400 from his parents. (EX 18) The next  
13 month, defendant continued to report employment by Apex Marketing and stated that he had  
14 received \$1,261.50 net wages from employment, producing a photocopy of a check purportedly  
15 drawn on the account of Apex Marketing Northwest, and a pay stub. (EX 19) Similar reports  
16 were filed in April and May 2004, with net wages of \$856.04 from Apex Marketing reported in  
17 each of those months. (EX 20, 21). Defendant produced a letter on Apex Marketing letterhead,  
18 signed by Shawnette Sampson, verifying his employment. (EX 19, page 5)

19        Then, in a meeting with Mr. Banks on May 27, 2004, the defendant reported that he had  
20    been laid off by Apex Marketing. (TR 20, EX 7 page 7) He reported being unemployed on the  
21    June, July, August, September and October 2004 monthly reports (EX 21-26). Defendant  
22    “adamantly” denied having business dealings with Prime Realty, a business owned by his parents,  
23    and “stated point blank that he was not receiving any monies in regards to his association with  
24    Prime Realty”. (TR 35, 46-47)

25 In reality, Apex Marketing was only a shell. It did no business and generated no income,  
26 and certainly did not pay the defendant any wages. Ms. Sampson did not supervise the defendant,

01 did not pay him any wages, and had no connection with Apex Marketing other than to follow the  
02 defendant's instructions to set up a bank account, obtain a business license and establish a Paychex  
03 payroll account. The defendant asked Ms. Sampson to cover for him with his probation officer.  
04 (TR 59) The defendant misrepresented his criminal record to Ms. Sampson. (TR 58) The purpose  
05 of Apex Marketing was to serve as a cover-up for defendant's true source of income, procuring  
06 mortgage loans by providing false information on loan applications, utilizing "straw buyers" who  
07 did not have the financial ability to purchase homes.

08 Testimony was provided at hearing by three young women who were induced by the  
09 defendant to be straw buyers for such properties, Shawnette Sampson, Selena Sheppard, and  
10 Fahmia Ali. I found all three to be credible witnesses, who testified in detail and appeared to be  
11 forthright and candid.

12 Shawnette Sampson testified that the defendant arranged to have her purchase three  
13 houses, (517 S. 38<sup>th</sup> Street in Tacoma, 908 S. Cushman Street in Tacoma and 10222 Waters Ave  
14 South in Seattle) which would then be re-sold. (TR 63) She was promised by the defendant that  
15 she would be given \$10,000 in exchange for the use of her credit. The defendant promised her  
16 that "his company" would pay the mortgage while the re-sale was pending. (TR 75) For the South  
17 Cushman property, the defendant gave her a blank promissory note to sign which he later filled  
18 in without her knowledge or permission, obligating her to pay the seller of the house \$40,000.  
19 (TR 70, EX 30) Prime Realty was paid \$30,000 for this sale. (EX 31) The owner of the Tacoma  
20 property on S. 38<sup>th</sup> Street testified the defendant presented the purchase offer to him and was the  
21 person he negotiated with. The property owner never met Ms. Sampson. (TR 109) The defendant  
22 told the property owner that Ms. Sampson was listed as the purchaser because she was one of the  
23 investors in the company and "one of the people that they used to buy houses". (TR 109-111)  
24 Prime Realty received \$20,000 from the sale. (TR 72, 121, 165-166, EX 53, 56) Ms. Sampson  
25 received \$10,000.

26 The defendant unsuccessfully attempted to procure a resale of the house on S. 38<sup>th</sup> Street

01 to another woman, Selena Sheppard, (EX 34, 35) who the defendant also induced to act as a straw  
02 buyer in another transaction for a property at 26<sup>th</sup> Avenue South (EX 41). She testified that she  
03 did not know that he was also attempting to have her purchase the S. 38<sup>th</sup> Street house. (TR 252,  
04 258-259)

05 Ms. Sheppard worked with the defendant in his connection with Prime Realty, which he  
06 told her was a family business. The defendant prepared all the paperwork for the deals. (TR 257,  
07 259) A false employer was listed, with false income information. (TR 251-252, EX 35, 41) The  
08 defendant's phone number was listed on one application as Ms. Sheppard's employer's business  
09 phone (EX 35) so that the defendant would be called when the mortgage credit company  
10 attempted to verify Ms. Sheppard's employment, and Ms. Sheppard's mother's phone number was  
11 falsely listed as her employer on another. (TR 136-142, 152-153, EX 39, 41, 57) The defendant's  
12 phone number was also falsely listed as Ms. Sheppard's landlord, so the mortgage credit company  
13 would call the defendant to verify Ms. Sheppard's rent account in order to evaluate her  
14 creditworthiness. The defendant listed Prime Realty as Ms. Sheppard's landlord, which was also  
15 false, as she was living with her parents. (TR 150-152, 244, EX 40) The defendant accompanied  
16 Ms. Sheppard to the real estate closing.

17 Upon completion of the mortgage loan transaction, the loan proceeds were sent by  
18 interstate wire from the Bank of America in Orange, California to the escrow company in Seattle.  
19 (TR 155-157, EX 43) The sum of \$35,000 was paid to Prime Realty & Investment LLC as a  
20 "consultant". (EX 43, page 2,6) The funds were sent by interstate wire to Prime Realty's Banner  
21 Bank account. (EX 43, page 4, 5, TR 159-161)

22 A third young woman, Fahmia Ali, was also induced to act as a straw buyer by the  
23 defendant for property on S. Alaska Street in Seattle and the S. Cushman property in Tacoma that  
24 had been purchased by Ms. Sampson. (EX 46) He explained to her that he worked with Prime  
25 Realty to get individuals to buy houses in their name and in six months he would sell the houses  
26 and make a profit, and she would receive a small percentage. (TR 188-189) The defendant

01 assisted her in filling out the applications and obtaining the loans. He told her to sign the forms  
02 with false information concerning her place of employment, monthly income and other  
03 information. He had her sign one of the loan applications in blank. (TR 191-200, EX 48) A rent  
04 verification form was completed with a false address, listing two different (false) addresses for Ms.  
05 Ali, and two different (false) landlords. (EX 51, 52, TR 163-164, 200-202) The defendant took  
06 her to the mortgage closing for one property and his sister-in-law went with her to the next. (TR  
07 203, 220) He told her that if she was interested in going into the real estate business, he or "his  
08 company" would pay for her real estate class. (TR 216)

## *FBI Investigation*

When Ms. Ali, age 19, told her mother about the transactions, her mother and her mother's friend convinced her to have second thoughts and to report the transaction to the police, and then to the lending institution, Washington Mutual. As she was leaving the Washington Mutual office, she got a cell phone call from the defendant, who had been alerted to her visit by the Washington Mutual employee. The phone call scared her. (TR 207) The defendant asked to meet with her (TR 235), and wanted to know exactly what she told the bank. He said she should be prepared to talk to the FBI and that she should cooperate. (TR 210, 227) He instructed her to lie to the FBI by saying that he didn't have any affiliation with or work for Prime Realty, that the information on the mortgage application regarding her two year employment at Prime Realty was a typographical error, and that she had intended on living in the house but changed her mind. She did not lie as he instructed. (TR 210-211)

### ***Listing of Residence***

22 The defendant listed his parents' address as his residence on his monthly reports (EX 10-  
23 27), but the evidence establishes that for at least August through November 2004, the defendant  
24 was living at 10222 Waters Avenue South (TR 123-130, 202), which was one of the addresses  
25 that was falsely listed as a residence for Ms. Ali (EX 46, 52) and one of the properties that was  
26 purchased and resold by Ms. Sampson. (TR 74).

## ***Bank Account and Cash Flow***

The record establishes that the defendant received payments from the Prime Realty checking account at Banner Bank from October 2003 through November 2004. (EX 54) Thirty separate checks were written either to "Cash" or to Lavell Frost, each of which was endorsed by Lavell Frost, in amounts ranging from \$55 for copying reimbursement to as much as \$2,200. None of these payments were reflected on the defendant's monthly reports to his probation officer.

## **Recommendations Regarding Violations**

I recommend the Court find that defendant violated his supervised release as alleged in

**Violation Number 1.** On his monthly reports from February through May 2004, defendant falsely stated his employment, his supervisor, his job title, his wages, and his cash inflow. He was not employed by Apex Marketing as a marketing rep, Shawnette Sampson was not his supervisor, and he was not paid wages by Apex Marketing. He did, however, receive considerably more funds from Prime Realty that he listed in his monthly financial statement. He fabricated paycheck stubs to submit to his probation officer. He also failed to disclose that he was living at 10222 S. Waters Avenue in late 2004. The statements were materially false and the defendant knew them to be so. A preponderance of the evidence shows that defendant committed the crime of making false statements in violation of 18 U.S.C. §1001.

I recommend the Court find that defendant did not violate his supervised release as alleged in **Violation Number 2.** This violation charges the defendant with committing the crime of wire fraud. A preponderance of the evidence shows that the defendant prepared false mortgage loan documents, as a result of which funds were transmitted by interstate wire to Prime Realty's bank account and to the real estate escrow account. 18 U.S.C. §1343 provides that it shall be illegal to "transmit or cause[s] to be transmitted by means of wire...in interstate or foreign commerce, any writings...for the purpose of executing [a scheme or artifice to defraud or to obtain money by means of false or fraudulent pretenses]". While the evidence shows that the funds were "caused to be transmitted" to the defendant as a result of the false writings, the evidence does not establish

01 that the defendant himself transmitted any documents by means of interstate wire. While the  
02 defendant's actions did set in motion a chain of events that caused funds to be transmitted by  
03 means of interstate commerce, it does not seem reasonable to utilize the relaxed preponderance  
04 of the evidence standard to find that the defendant committed the crime of wire fraud when the  
05 wire transfer was incidental to the rest of the transaction. Furthermore, these same transactions  
06 are addressed in other alleged violations. Therefore, I do not believe that it would be in the  
07 interests of justice to find that the defendant committed this alleged violation.

08 I recommend the Court find that defendant violated his supervised release as alleged in  
09 **Violation Number 3.** Ms. Ali testified credibly that the defendant demanded a meeting with her  
10 when he learned that she had gone to the lending institution to tell them she had put information  
11 on the loan application that was not true. While the defendant told her to cooperate with the FBI,  
12 he also told her what to say to them, which information would have been false, and which the  
13 defendant knew to be false. 18 U.S.C. §1512(b)(3) makes it criminal to "corruptly persuade"  
14 another person, or attempt to do so, to engage in misleading conduct to hinder, delay or prevent  
15 the communication to a law enforcement officer of information relating to, *inter alia*, the  
16 commission of a federal offense or violation of conditions of supervised release. To "corruptly  
17 persuade" is to be "motivated by an inappropriate or improper purpose to convince another to  
18 engage in a course of behavior", and can be construed to include non-coercive attempts to tamper  
19 with a witness. *United States v Khatami*, 280 F.3d 907, 911-912 (9<sup>th</sup> Cir. 2001). A preponderance  
20 of the evidence shows that defendant attempted to persuade Ms. Ali to lie to the FBI.

21 I recommend the Court find that defendant violated his supervised release as alleged in  
22 **Violation Number 4 and 6.** The evidence is overwhelming that the defendant was conducting  
23 business under the name of Prime Realty. He told this to the three straw buyers. The seller of the  
24 Tacoma property testified that the defendant, acting as Prime Realty, negotiated the property  
25 purchase. The defendant, in the capacity of Prime Realty, prepared the loan application and  
26 mortgage documents for the straw buyers, and arranged for funds from the loan proceeds to go

01 to Prime Realty. He was paid thousand of dollars by Prime Realty, of which some payments were  
02 specifically designated as draws. The defendant maintained an office in Renton where he  
03 conducted business. He went to some lengths to conceal his relationship to Prime Realty by  
04 creating a sham employer called Apex Marketing for his month reports to his probation officer.  
05 A preponderance of the evidence shows that the defendant failed to disclose his interest in and  
06 self-employment with Prime Realty to his probation officer.

07 I recommend the Court find that defendant violated his supervised release as alleged in  
08 **Violation Number 5.** This violation relates to special condition #7, which requires the defendant  
09 to "maintain a single checking account in his name. Defendant shall deposit all income, monetary  
10 gains or pecuniary proceeds, and make use of this account for payment of all personal expenses.  
11 This account, and all other bank accounts, must be disclosed to the probation office." (DKT 22)  
12 Month after month, the defendant reported to his probation officer that he did not have a checking  
13 or savings account. (EX 8-27) The evidence shows, however, that checks were regularly issued  
14 to the defendant from a Prime Realty bank account, which he cashed. The checks were issued  
15 by Brenda Frost, so there is no evidence that the defendant was a signatory on the Prime Realty  
16 bank account. Therefore, the evidence does not show that the defendant violated special condition  
17 #7 by maintaining a bank account which he failed to disclose. The evidence does permit an  
18 inference, however, that the defendant was utilizing these disbursements to avoid maintaining a  
19 bank account that would have to be disclosed to his probation officer. Special condition #7 not  
20 only required the defendant to disclose bank accounts that he did maintain, but affirmatively  
21 required him to maintain an account into which he must deposit all income and from which he  
22 must pay all expenses. As the defendant's probation officer testified, an important part of  
23 supervision with a financial fraud defendant is to monitor the individual's finances. A  
24 preponderance of the evidence shows that the defendant did not maintain a single bank account,  
25 and in fact took actions to circumvent this condition of supervised release.

26 I recommend the Court find that defendant violated his supervised release as alleged in

01 **Violation Number 7.** The evidence establishes that at least from August through November  
02 2004, the defendant was maintaining a residence at 10222 Waters Avenue South, which was one  
03 of the addresses which was the subject of the fraudulent transactions, and was not the address that  
04 he listed on his monthly report. His ex-wife Ena Robinson brought their children to that address  
05 to stay with him on at least ten occasions, sometimes on the weekend or sometimes during the day  
06 for a couple of hours. His belongings were in the house, he had a bed in the house, and he always  
07 answered the door when she knocked. The children stayed there with him. He also told Ms. Ali  
08 that he was living at 10222 Waters Avenue South when they stopped by the house on the way to  
09 fill out some of the loan documents. The purpose of standard condition #6 is to allow defendant's  
10 probation officer to keep track of where he is living, to check on his activities and whereabouts,  
11 and to conduct unannounced visits if the probation officer chooses to do so. A preponderance of  
12 the evidence shows that the defendant withheld this information from his probation officer.

13 I recommend the Court find that defendant violated his supervised release as alleged in  
14 **Violation Number 8.** Standard condition #5 not only requires the defendant, by inference, to  
15 avoid unlawful employment, but also requires him to secure and work regularly at lawful  
16 employment. With the possible exception of June and July 2003 when the defendant reported  
17 employment at CNA Construction (EX 8 and 9), a preponderance of the evidence establishes that  
18 the defendant failed to maintain lawful employment during the duration of his supervised release.  
19 Indeed, a preponderance of the evidence establishes that he was engaged in fraudulent, unlawful  
20 activities.

21 I therefore recommend the Court find defendant violated his supervised release as alleged  
22 in Violations 1, 3, 4, 5, 6, 7, and 8, and that the Court conduct a hearing limited to the issue of  
23 disposition. The next hearing will be set before Judge Zilly.

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01 Pending a final determination by the Court, defendant has been detained.  
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03 DATED this 4th day of August, 2005.  
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08 Mary Alice Theiler  
09 United States Magistrate Judge  
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cc: District Judge: Honorable Thomas S. Zilly  
AUSA: Jeffrey B. Coopersmith  
Defendant's attorney: Kenneth E. Kanev  
Probation officer: Michael K. Banks